

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EHOSTAR SATELLITE LLC, a Colorado corporation, EHOSTAR TECHNOLOGIES CORPORATION, a Texas corporation, and NAGRASTAR LLC, a Colorado corporation,

Plaintiffs,

v.

FINISAR CORPORATION, a Delaware corporation,

Defendant.

Case No. 06-0425-JJF

**DEFENDANT FINISAR CORPORATION'S
RESPONSE TO EHOSTAR'S NOVEMBER 13, 2006
LETTER TO THE COURT PURSUANT TO LOCAL RULE 7.1.2(c)**

EchoStar has written to bring to the Court's attention the November 9, 2006 decision of Judge Alsup in Comcast Cable Communications v. Finisar Corp., No. C-06-04206 WHA (N.D. Cal. Nov. 9, 2006). [D.I. 20]. Although permitted by Local Rule 7.1.2(c) to briefly discuss why this case is pertinent, EchoStar chose not to do so. In point of fact, the Comcast decision is not at all pertinent to the issues before this Court. It establishes no new principle of law, and the underlying facts are critically different from the facts of record in this case.

First, a fundamental factual distinction between the cases is that there have been ongoing licensing discussions between Finisar and EchoStar involving exchanges of correspondence, one in-person meeting and another scheduled in-person meeting. No such negotiations were even begun with Comcast, and the California Court was thus not faced with the principle enunciated in Phillips Plastics Corp. v. Kato Hatsujou Kabushiki Kaisha, 57 F.3d 1051, 1053

(Fed. Cir. 1995), that when there are “ongoing license negotiations, a litigation controversy normally does not arise until the negotiations have broken down.” Second, whatever apprehension of litigation Comcast may have had when it filed suit cannot make up for the total absence of any evidence that EchoStar had an apprehension of litigation when it filed this suit. Finally, in the Comcast case, Judge Alsup placed considerable importance on a letter sent to Comcast in June 2006. See slip op. at 2, 4. There was no comparable letter sent to EchoStar.

Finisar respectfully submits that the Comcast decision provides no support for EchoStar’s position in this case.

Respectfully submitted,

DATED: November 16, 2006

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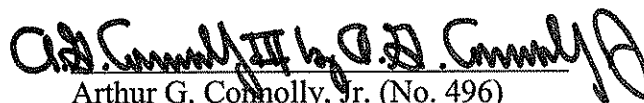
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CERTIFICATE OF SERVICE

I, ARTHUR G. CONNOLLY, III, do hereby certify that on this date, true and correct copies of the foregoing Defendant Finisar Corporation's Response To EchoStar's November 13, 2006 Letter To The Court Pursuant To Local Rule 7.1.2(c) were served upon the following counsel via ECF and as follows:

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